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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE 419th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 5 May 2000, at 3 p.m.

Chairman: Mr. BURNS

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GE.00-41997 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Poland (CAT/C/44/Add.5) (continued)

Conclusions and recommendations of the Committee (CAT/C/24/Concl.1/Rev.1)

1. At the invitation of the Chairman, Mr. Knothe (Poland) took a place at the Committee table.

2. The CHAIRMAN invited the Country Rapporteur to read out the Committee's conclusions and recommendations on the third periodic report of Poland.

3. Mr. MASRY read out the following text:

"1. The Committee considered the third periodic report of Poland (CAT/C/44/Add.5) at its 412th, 415th and 419th meetings, held on 2, 3 and 5 May 2000 (CAT/C/SR.412, 415 and 419) and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee notes with satisfaction that the third periodic report is comprehensive, informative and conforms with the general guidelines for the preparation of State party reports, with regard to both the form and the content.

3. The oral statement of the delegation of Poland and its explanations and clarifications and the discussion that followed complemented the written information provided.

B. Positive Aspects

4. The Committee notes with appreciation the impressive and successful efforts made by the State party that have led to major transformation in the political, social, economic, legislative and institutional spheres in Poland.

5. The Committee notes in particular:

(a) The adoption of the new Constitution and its entering into force on 17 October 1997, which contains new elements for the defence of freedoms and the rights of citizens and which stipulates the respect of international law binding on Poland and ensures the precedence of international agreements over domestic law in case of conflict;

(b) The introduction in the new Constitution of the norm that stipulates that 'no one be subjected to torture or cruel, inhuman or degrading treatment or punishment', which is an important step towards achieving the requirements and recommendations of the Committee, namely that a definition of torture, which fully covers all the elements in the definition contained in article 1 of the Convention, be incorporated into the domestic law;

(c) The abolition of the death penalty;

(d) The fact that no statute of limitation applies with respect to war crimes and crimes against humanity.

C. Principal subjects of concern

6. The Committee is concerned that the amendments to the domestic legislation do not contain any provisions for the prosecution and punishment of those guilty of the crime of torture, as required by articles 1 and 4 of the Convention.

7. The Committee is also concerned about the fact that the new Penal Code does not introduce any substantial change regarding orders from superiors when they are invoked as justification of torture. According to existing legislation, criminal responsibility of the recipient of the order is based on his awareness of the criminal nature of the command.

8. The new Penal Code does not include the 'danger of exposure to torture' as one of the grounds for the refusal of extradition as is required by article 3 of the Convention.

9. The Committee notes that, in spite of the efforts of the State party, some drastic acts of aggressive behaviour of police officers continue to occur, which has resulted in death in some instances.

10. The Committee is also concerned about the persistence in the army of the practice of the so-called 'fala', whereby new recruits are subjected to abuse and humiliation.

D. Recommendations

11. Although the Committee notes that the new Polish Constitution recognizes international conventions ratified by Poland to be part of the Polish legal system, it also notes that in the Polish legal system there are no charging conditions nor penalties applicable to the crime of torture. Therefore, the Committee recommends that the State party introduces such legislative changes as are necessary to identify torture as a specific crime and to enable prosecutions of torture, as defined in the Convention, and the application of appropriate penalties.

12. The Committee further recommends amending the Penal Code to ensure that orders of superiors cannot be invoked, in any circumstances, as justification of torture.

13. The State party should introduce an effective and reliable complaint system that will allow the victims of torture and other forms of cruel, inhuman or degrading treatment or punishment to file complaints.

14. Legislative and administrative measures should be introduced to safeguard against excessive use of force by the Police, in particular in connection with the supervision of public meetings and to safeguard against the persistence of abusive measures associated with the practice of so-called 'fala' in the army."

4. Mr. KNOTHE (Poland) assured the Committee that its advice and recommendations would be considered by his Government with all due seriousness, and would be of assistance in improving the Polish legal system. The aim of the Government was to enhance human rights in his country.

The meeting was suspended at 3.10 p.m. and resumed at 3.35 p.m.

Third periodic report of China (CAT/C/39/Add.2) (continued)

5. At the invitation of the Chairman, the delegation of China took places at the Committee table.

6. The CHAIRMAN invited the delegation of China to present its replies to the questions put by Committee members.

7. Mr. QIAO Zonghuai (China) said his delegation would do its best to clarify the questions raised. Answers that could not be provided immediately would be forwarded to the Committee at a later date.

8. Replying to a question raised by Mr. Mavrommatis, he said that China adhered to the principle of pacta sunt servanda. Under the Chinese legal system, the international instruments to which that country was party were considered part of Chinese law and legally binding. In the event of conflict between an international instrument and a domestic law, the provisions of the international instrument took precedence, unless contrary reservations applied. The Convention against Torture, having been ratified by the Standing Committee of the National People's Congress, was binding on Chinese law-enforcement and judicial organs. Special domestic measures nevertheless had to be taken to give effect to the provisions of international treaties.

9. Since the Convention against Torture was part of Chinese law, the definition of torture contained in that instrument applied. In practice, the Convention could be invoked before the Chinese courts. China's Criminal Law contained a detailed description of what constituted an act of torture, including the extortion of a confession under torture, the extraction of testimony by the use of force, and mistreating or abusing a person in custody. Any direct or indirect act of physical abuse, and any act involving intimidation, threats or the infliction of mental suffering, committed by a judicial officer for the purpose of extorting a confession was a crime. Illegal search, illegal detention and humiliation were also seen as torture-related crimes, whether carried out by a public official or a non-public person.

10. The regulations of the Supreme People's Procuratorate on filing a case were merely an interpretation of the Criminal Law, and in no way restricted the scope of the crime of torture. The Criminal Law established a distinction between a crime and an unlawful act; a minor offence that did not constitute a crime was nevertheless subject to administrative or disciplinary sanctions.

11. Under Chinese law, any law enforcement officer who committed an act of torture or other cruel, inhuman or degrading treatment or punishment was severely sanctioned. If the perpetrator invoked the order of a superior as justification, the criminal responsibility of both would be investigated.

12. Responding to a question raised by Mr. Mavrommatis and Ms. Gaer, he said that China attached great importance to the protection of women's rights and interests and had promulgated a number of laws to that effect. The Law on the Protection of Women's Rights and Interests, enacted in 1992, provided for equality between men and women, the protection of women's special interests, and the gradual improvement of social security for women. It also prohibited discrimination against, maltreatment of and cruelty to women. The revised Criminal Law stipulated that anyone who behaved indecently to a woman, or used violence, coercion or other forcible means to insult her would be severely punished. The Government was currently taking severe measures against the abduction of women and children, in an effort to save the victims.

13. Women's rights and interests were also protected during judicial proceedings. Female criminals were held in women's prisons and dealt with by female police officers. Male officers could not enter a female-designated area without the accompaniment of a female officer. Male and female prisoners were not permitted to work together. Although prison regimes were the same in men's and women's prisons, attention was paid to women's special physiological and psychological characteristics in the areas of education, daily life, labour and medical care. A woman whose rights were violated could file a complaint and was entitled to compensation.

14. In the matter of family planning, China had traditionally combined guidance with personal decision-making, and firmly opposed force or coercion. The Government had introduced improved educational programmes for family-planning officials, in order to eradicate a rude and brutal approach to that subject. In 1996, for example, two officials had mistreated and detained persons during a family planning mission in Liangcheng; they had been prosecuted and sentenced to imprisonment.

15. In recent years, the incidence of domestic violence against women had risen, arousing great concern in the Chinese community. The Government had strengthened the relevant legislation, and was working with non-governmental organizations (NGOs) and other associations to combat the problem. Furthermore, the National People's Congress was currently making appropriate amendments to the legislation on marriage.

16. Girl babies were indeed sometimes still abandoned or killed in remote or mountainous areas. The Government was taking strong measures to enforce legal prohibitions in those areas, while also conducting a legal education campaign, improving the birth registration system, and strengthening child welfare institutions.

17. Responding to questions raised by Mr. Mavrommatis and Mr. Burns, he said that the Public Security Organs had investigated the illegal organization known as Falun Gong, and had amassed a huge amount of evidence against it. Falun Gong was a cult that met secretly, had a hierarchical chain of command, practised mind control, fabricated heretical ideas, amassed money and endangered society. It had caused the death of over 1,500 persons. According to medical diagnoses, over 600 people suffered from mental block as a result of practising Falun Gong. Certain members of the sect had imagined their parents were devils and murdered them. The leaders of the cult had produced illegal publications with a view to amassing money and spreading their malicious lies. They had stolen State secrets, and had besieged and assaulted government organs and press organizations, disturbing the social order and gravely endangering society.

18. The Government could not sit idly by and permit Falun Gong to endanger Chinese society and bring harm to the Chinese people. In accordance with the decisions of the Standing Committee of the National People's Congress on banning cultist organizations and preventing and punishing cult-related activities, and with the provisions of the Criminal Procedure Law and the explanations issued jointly by the Supreme People's Court and the Supreme People's procuratorate on specific applications of the law in dealing with the use of cults for criminal activities, the Government had identified Falun Gong as a cultist organization and banned it.

19. Most of the two million Falun Gong followers had merely wished to improve their health and had been deceived and victimized by the plotters, organizers and core members, whose activities they had been unaware of. On learning the truth, about 98 per cent had dissociated themselves from the organization, and their rights were therefore protected. On 25 March 2000, the People's Courts of China had concluded the trials of 91 Falun Gong-related cases, involving 99 persons. Of those, 84 had been convicted and 15 acquitted. A warrant had been issued for the arrest of Mr. Li Hongzhi, the founder of Falun Gong, who had fabricated and spread heretical ideas; advocated superstitious fallacies; instigated individuals to assemble people, provoke trouble, and disturb the social order; illegally amassed money; and caused people to mutilate themselves, commit suicide and suffer mental disorders.

20. In dealing with Falun Gong cult followers, police and judicial officers had acted in strict accordance with the law. It was not true that numerous arrests had been made and torture extensively applied. In the case mentioned by Mr. Mavrommatis, Ms. Chen Zixiu, who was now dead, had been obsessed with Falun Gong and had gone to Beijing to attend illegal gatherings. On 17 February 2000, at the Weifang Railway Station on her way to Beijing again, she had been persuaded to return home. On 21 February she had felt ill and had been sent directly to a hospital, where she had died of a heart attack despite efforts to save her. Ms. Chen Zixiu had never been held in custody, beaten or physically abused. Her daughter, Ms. Zhang Xueling, had distorted the facts of her mother's death, had spread rumours, and had disturbed the social order. On 17 April, the Weifang Public Security Organ had sentenced Ms. Zhang Xueling to 15 days' detention in accordance with the regulations on administrative penalties for acts endangering public security.

21. Mr. LI Yuquian (China), replying to a question raised by Mr. El Masry and Mr. Burns, said that the system of re-education through labour was an administrative measure to educate and reform persons who had committed unlawful acts or minor crimes but who were not subject to

criminal penalties. Under the relevant laws and regulations, a person who had been sentenced to re-education through labour could file an appeal with a People's Court and engage a lawyer to defend him. The administrative committees were required to follow all procedures prescribed by law in sentencing a person to re-education through labour, and were required to accept the supervision of the People's Courts. Persons wrongly subjected to re-education through labour were entitled to compensation. Throughout the country, drug abuse, prostitution and frequenting prostitutes were the offences most often subject to that measure.

22. Re-education through labour, which was grounded in the tenets of education, persuasion and redemption, had prevented many persons from lapsing into a life of crime. It preserved social stability and thus was an important component of China's socialist legal system. Since 1998, the National People's Congress had been examining ways of improving and updating the legislation on re-education through labour, a subject under consideration by many experts and scholars. The Chinese Government would conscientiously consider the Committee's useful suggestions.

23. Replying to a question raised by Mr. Burns and Ms. Gaer, he said that prisoners in ethnic minority areas enjoyed the same treatment regardless of ethnic origin. In fact, prisons accorded special consideration to the special features and characteristics of ethnic groups, especially when arranging educational and recreational programmes for such prisoners, and organized celebrations on ethnic holidays.

24. The allegation that the Chinese Government inflicted torture on prisoners in ethnic minority areas was groundless. Prison authorities accorded all prisoners humanitarian treatment, regardless of the nature of their crimes, in strict accordance with the legal principles of rigorous, civilized, scientific and direct supervision. Prisoners' rights were fully protected, and no prisoner was subject to discrimination or maltreatment.

25. The allegations that over 90 per cent of the prisoners held in Xinjiang were tortured and that nuns in Tibetan prisons had been raped were not worth refuting. In May 1998, during a flag-raising ceremony at a prison in the Tibetan Autonomous Region, a handful of criminals had shouted separatist slogans, assaulted prison guards, smashed prison facilities, and seriously disturbed the social order. Prison guards had taken measures to quash the revolt in accordance with the Prison Law. No deaths by beating had occurred. Since some prisoners had committed the crime of undermining the order of the prison administration and inciting persons to split the State, additional punishment had been meted out to them.

26. Responding to a question posed by Mr. Mavrommatis, he said that the Chinese Government attached great importance to prisoners' right to life and health. The Prison Law stipulated that prisons must provide medical and health care, living quarters, and sanitation facilities. All prisons must have medical clinics staffed around the clock by doctors. A sick prisoner had the right to request medical treatment and was permitted freely to choose his doctor; doctors could not refuse to treat criminals. Prison hospitals assigned doctors in accordance with the nature of the illness and were required to provide timely treatment. Medical care for prisoners in China was based on the combined principles of prevention and treatment. Prison administrative committees operated a three-tier medical-care and epidemic-prevention network. The number of beds in medical institutions per 1,000 prisoners was currently 15.95 and medical

staff per 1,000 prisoners 11.59, both of which figures were higher than the average in society as a whole. Prisoners underwent routine physical check-ups once a year. In cases where they were seriously ill and sufficient treatment could not be administered in a prison hospital, they would be sent to a general or non-prison hospital for treatment or be released on medical parole.

27. Regarding prison violence and "black authority" among inmates, the Prison Law stipulated in explicit terms that prison officers should exercise direct management over prisoners. Article 14 of that Law provided that the people's police in a prison should not beat or connive with others to beat a prisoner, or surrender the functions and powers of supervision of prisoners to another person. The possibility that some individual police officers used inmates to control other inmates in their daily work could not be excluded, but if such cases were discovered, the lawbreakers concerned would incur severe criminal or administrative penalties.

28. With regard to the organs of executed criminals, their families were notified that they should collect the corpse and dispose of it as they saw fit. If the family members renounced that right, the executing authorities would handle the corpse according to the principles of humanitarianism and civility. In China, citizens were encouraged to donate their organs voluntarily so as to save the lives of others and help those with diseases. In the case of executed persons, if they voluntarily indicated that they were willing to donate their organs after their death, the Government would normally grant their requests. No criminals would be forced, however, to donate their organs, nor would organs be transplanted, without their consent.

29. Mr. LIU Boxiang (China), responding to Mr. Silva Henriques Gaspar's question regarding action taken by the Ministry of Public Security regarding extortion of confessions through torture, said that in recent years the Ministry had taken a series of measures to address the issue. The Ministry had also established a rule whereby, in the case of extortion of confessions through torture, an investigation would be made into the criminal responsibility of the officers involved. The chief of the local public security bureau or department would also be summoned to the Ministry for a performance review. During a recent law-enforcement campaign, extortion of confessions through torture had been identified as one of the priorities for action.

30. The Ministry of Public Security had also drawn up a number of rules on law-enforcement supervision and investigation into responsibility for mistakes arising from improper law enforcement. In general, the number of cases of extortion of confessions through torture was decreasing rapidly, but their elimination was a long-term task to which the Chinese authorities would continue to apply themselves unremittingly.

31. With regard to administrative detention, he said that the Regulations of the People's Republic of China on Administrative Penalties for Public Security stipulated that those violating the administration of public security would be subject to detention for a period ranging from 1 to 15 days. According to article 39 of those Regulations, a person on whom such a penalty was imposed and who refused to accept the ruling on administrative detention might lodge an appeal to a public security body at a higher level. If still not satisfied with the ruling of that body, he could initiate litigation at the local people's court. According to article 3 of the Law of the People's Republic of China on State Compensation, in cases of unlawful detention the victims

were entitled to compensation. Specific provisions on the mechanism for the implementation of administrative detention were laid down in the Law of the People's Republic of China on Administrative Penalties.

32. Regarding criminal suspects' access to lawyers, under the 1979 Law defendants had been entitled to engage counsel to defend them only at the trial stage. Counsel could not intervene prior to that. Since that had not been conducive to the effective protection of the legitimate rights and interests of criminal suspects, the Criminal Procedure Law had been amended in 1996 and had brought forward the time of a lawyer's participation in criminal proceedings to the stage of investigation. Paragraphs 70-80 of the third periodic report (CAT/C/39/Add.2) provided a detailed explanation of a lawyer's rights and role at the stage of investigation.

33. With reference to the revised Criminal Procedure Law, the Regulations on the Procedures for the Handling of Criminal Cases by Public Security Organs clearly defined cases involving State secrets. Article 37 stipulated that in handling such cases public security organs should inform criminal suspects that approval was required before they could engage the services of a lawyer. The confidentiality required for relevant information during the process of investigation could not be construed as involving State secrets.

34. In answer to another question put by Mr. Silva Henriques Gaspar, article 69 of the Criminal Procedure Law specified a time limit for criminal detention. The provision had been formulated in the light of conditions in the country and was designed to guarantee the legitimate rights and interests of citizens. There had, however, been some individual cases where public security organs had exceeded the legal time limit for detention. In order to prevent and limit such unlawful acts, article 15 of the Law of the People's Republic of China on State Compensation stipulated in express terms that wrongful detention of a person in the absence of incriminating facts or a well-founded suspicion that a crime had been committed would entitle the victim to compensation.

35. With regard to a criminal suspect's right to silence, article 93 of the Criminal Procedure Law stipulated that suspects should answer the questions posed by investigators truthfully but that they were entitled to refuse to answer any questions that were irrelevant to a case. Article 46 of the Law also provided that in the decisions taken, emphasis should be placed on evidence, investigation and study. A defendant could not be found guilty and sentenced to a criminal punishment on the strength of his oral statement only. Article 43 of the same Law strictly prohibited extortion of confessions by torture and collection of evidence by threat, enticement, deceit or other unlawful means. Although Chinese law did not have any specific written provisions on a criminal suspect's right to silence, in practice there was no provision, in case of refusal to answer questions, for any consequences to be borne by the suspect.

36. The Regulations on the Use of Police Instruments and Weapons by the People's Police contained explicit provisions on the definition and use of police instruments and the ensuing legal responsibilities. Since 1995 electric batons had been replaced by rubber batons, manufactured according to rules laid down by the Ministry of Public Security. Police were allowed to carry batons only when performing official duties and could use them only in the case of riots or where police officers were assaulted.

37. In answer to the question raised by Mr. Mavrommatis regarding the mechanism for citizens filing complaints against torture, express provisions were contained in the National Constitution, the Criminal Law, Administrative Law, People's Police Law, Public Procurators Law, Judges Law and State Compensation Law concerning a citizen's right to file an accusation or complaint or to report offences. The people's procuratorates, which were the State bodies responsible for legal supervision, had the authority to accept complaints against State officials who had committed crimes of torture in the exercise of their duties, to file cases for investigation and initiate public prosecutions. They were also required to take rigorous measures to prevent acts of torture. Within their organizational framework, the people's procuratorates had established a number of special departments to deal with dereliction of duty by procurators and to determine whether the investigation and execution of criminal punishments were in conformity with the law.

38. In recent years, work on citizens' complaints had been strengthened. Complaints and petitions from detainees were handled without delay and their legitimate rights and interests protected. Since 1997, the Supreme People's Procuratorate had successively drawn up the Procuratorial Regulations for Prisoners, the Procuratorial Regulations for Custody Houses and the Regulations on Procuratorates or Procuratorial Teams accredited to Prisons and Reformatories. Cases of extortion of confessions by torture and bribery, release of criminals without authorization and maltreatment of detainees had been severely dealt with and those found guilty punished according to the law.

39. Mrs. XUE Shulan (China) reiterated that, with regard to the admissibility of evidence collected by torture, it was strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. On that subject, the Supreme People's Procuratorate had produced a document entitled "Explanations of Issues in the Implementation of the Criminal Procedure Law of the People's Republic of China". Evidence collected by such unlawful means could not serve as a basis for deciding a case. During a trial, if a defendant stated that his previous confessions or statements had been made under torture, the court would look into the matter and, if required, suspend the court session for investigation.

40. With regard to open trials, under Chinese law all cases must be heard in public, except those involving State secrets, private affairs of individuals, or crimes committed by minors. Even where a case was not heard in public, judgement must be pronounced publicly. In recent years, efforts had been made to improve all mechanisms relating to court trials. The main purpose was to ensure that justice was done and a fair, honest and efficient mechanism for trials established. To that end, the system of open trials had been strengthened.

41. In order to address the issue of non-transparency of trials, the Supreme People's Court had drawn up the Regulations on the Strict Implementation of the Open Trial System, according to which all cases must be heard in public where the law so required. In the course of such a trial, all evidence must be produced in the courtroom, witnesses questioned and cross-examined, debate conducted and evidence verified. Such an approach made it easier for the general public to monitor trials.

42. Turning to the subject of the death penalty, he said that its application was strictly limited. It was used only in the case of criminals who had committed extremely serious crimes.

Firstly, all death sentences must be vetted and approved by the Supreme People's Court. Secondly, if the immediate execution of a criminal sentenced to death was not deemed necessary, a two-year suspension could be pronounced. Thirdly, the death penalty was not imposed on persons who had not reached the age of 18 at the time their crimes were committed or on women who were pregnant at the time of their trial. Finally, the conditions for imposing the death penalty as defined in the revised Criminal Law were more rigorous than those previously in force.

43. China also prohibited the practice of parading in public criminals to be executed. People's courts at all levels had done a great deal of work to reduce and eliminate such practices. Where they did occur, they were dealt with very seriously in accordance with the law. The death penalty was carried out mainly by shooting. The revised Criminal Law also provided for execution by lethal injection, but so far very few criminals had been executed in that way. It was planned that, following a period of experiment, criminals to be executed might be consulted as to how they wished to die.

44. The Criminal Law provided that, where the immediate execution of a criminal punishable by death was not deemed necessary, a two-year suspension of execution could be pronounced simultaneously with the imposition of the death sentence. That system had greatly restricted the conditions and scope for the application of the death penalty. Criminals sentenced to death with a suspension of execution could have their sentences commuted to life imprisonment if they did not commit any further crimes during their period of suspension. In practice, 99 per cent of criminals sentenced to death were in that situation.

45. In answer to a question put by Mr. Mavrommatis, military courts or courts martial had jurisdiction over cases involving persons other than military servicemen only where the persons concerned worked within military establishments, or where a military serviceman and a civilian jointly committed a crime involving military secrets.

46. With regard to extradition and judicial assistance, since China's accession to the Convention against Torture that instrument had enjoyed the same validity as Chinese domestic law in terms of its application. Article 3 of the Convention could therefore be invoked directly by the Chinese judiciary. According to the extradition treaties entered into by China, convicted criminals sentenced to fixed-term imprisonment of one year or more could be extradited. That included perpetrators of crimes of torture, but no case had so far occurred in practice.

47. As of April 2000, China had concluded extradition treaties with 11 countries, including the Russian Federation, Romania, Bulgaria, the Republic of Mongolia and Cambodia, with which it was conducting cooperative activities in the areas of extradition and legal assistance. China's most important legislative body was currently working on a Law of the People's Republic of China on Extradition. In cases involving countries without an extradition or legal assistance treaty with China, relevant international conventions applied or the countries concerned could seek cooperation through diplomatic channels on the basis of reciprocity.

48. Decisions on extradition requests by other countries could be made by the Chinese Foreign Ministry in collaboration with the competent judicial bodies. During the extradition

process, the legitimate rights and interests of the persons to be extradited were protected by the law. Their period of detention must not exceed prescribed time limits and they were allowed to engage lawyers to make statements on their behalf.

49. With regard to the repatriation by China of seven citizens of the Democratic People's Republic of Korea, mentioned by Mr. Mavrommatis, on 30 December 1999 China had received from Russia the seven nationals in question, who had illegally crossed the border, and repatriated them to their homeland. Following investigations, the competent authorities had ascertained that the seven Koreans had illegally crossed the Chinese and Russian borders for economic reasons. Since they were not refugees, the case had been dealt with in accordance with the bilateral agreements in place. In its handling of the case, China had in no way violated the principle of non-repatriation of refugees. On 28 January 2000 the Chinese Government had delivered a note to the United Nations High Commissioner for Refugees, explaining what had actually taken place.

50. With regard to criminal jurisdiction, in addition to the provisions cited in paragraph 16 of the report (CAT/C/39/Add.2), article 9 of the Criminal Law stipulated that such legislation was applicable to crimes specified in international treaties to which China was a party. Thus, an alleged offender who was present in Chinese territory would either be extradited or prosecuted in China, regardless of whether the crime had been committed in Chinese territory.

51. The competent departments of the Chinese Government were currently considering, in an overall context, whether China should withdraw its reservations to the Convention and make declarations under articles 21 and 22.

52. Mr. MAVROMMATIS (Country Rapporteur) thanked the Chinese delegation for the written replies to the Committee's questions concerning Part I of the report. He hoped that the State party's subsequent replies to the questions that had remained unanswered would include statistical data with a breakdown by region and sex.

53. He asked whether the decisions of the Criminal Branch of the Supreme People's Court were published. Were there any cases, for example, where a conviction had been overturned on the grounds that a confession obtained under duress was inadmissible as evidence?

54. Mrs. XUE Shulan (China) said that when the Supreme People's Court or the high court dealing with a case found that a lower court had obtained evidence by means of torture or similar practices, it declared the resulting judgement null and void.

55. Although court proceedings were open to the public except in cases concerning minors or involving personal privacy or national secrets, China's legal system was based on civil law rather than case law and the arguments underlying court decisions were not normally published. However, collections had been made of the proceedings and decisions in some ground-breaking cases.

56. Ms. GAER, thanking the delegation for its comprehensive and informative responses, suggested that any statistical data supplied in response to unanswered questions should be broken down not only by region and sex but also by category of crime and nature of sentence or punishment.

57. She wished to know more about how the process of investigation of individual complaints of abuse or torture was facilitated by the central and local authorities, for example in cases of abusive enforcement of the population policy. What was the procedure for obtaining individual consent, particularly in the case of organ donors?

58. The CHAIRMAN reminded the delegation of his question regarding the number of executions carried out over a specific period of time.

59. He invited the delegation to respond to the Committee's questions about Part II of the report, concerning the Hong Kong Special Administrative Region.

60. Mr. Stephen WONG (China) said that the decision to seek an interpretation of the Basic Law from the Standing Committee of the National People's Congress had in no way undermined the effectiveness of the judiciary. The Court of Final Appeal had based its view that no interpretation was required on the grounds that article 24 (2) and (3) of the Basic Law, which specified one category of persons entitled to the right of abode in the Special Administrative Region (SAR), did not concern matters falling within the competence of the Central People's Government or the relationship between the central authorities and the SAR and could therefore be interpreted by the Court itself. It had further taken the view that article 22 (4) of the Basic Law requiring persons from other parts of China to obtain approval for entry into the SAR was not the predominant provision calling for interpretation although it concerned the relationship between the central authorities and the SAR. The Standing Committee of the National People's Congress had subsequently decided that both articles should have been referred to it for interpretation, a procedure based on article 158 of the Basic Law. The Standing Committee's interpretation ascertained the true legislative intent of the provisions in question. It did not deprive the Court of Final Appeal of its power of final adjudication, nor did it undermine the Court's independence and effectiveness. The SAR Government had not sought to overturn or rectify the Court's judgement and the rights of the litigants in the case had not been affected. However, the Court's powers of interpretation of the Basic Law were delegated to it by the Standing Committee of the National People's Congress and when the latter made an authoritative legislative statement, the Court was required, in accordance with the rule of law, to decide cases in the light of that statement. The Court had confirmed in a subsequent case that the Standing Committee had general and unqualified authority to interpret any provision of the Basic Law and that courts in the SAR were bound by that decision.

61. Although the Convention against Torture was not mentioned in the Basic Law, its provisions enjoyed the force of law in the SAR. Article 7 of the International Covenant on Civil and Political Rights concerning torture or cruel, inhuman or degrading treatment or punishment, as applied to Hong Kong, remained in force in the SAR and was reflected in article 3 of the Bill of Rights Ordinance. Article 28 of the Basic Law also contained a provision prohibiting the torture of any resident. The Crimes (Torture) Ordinance had been enacted to give effect to the Convention in Hong Kong. Other provisions were implemented through the Offences against

the Person Ordinance and the common-law criminal justice system. Courts in the SAR construed domestic legislation in such a way as to avoid incompatibility with international obligations.

62. A special team of government lawyers advised the SAR Government on the compatibility of policies and practices with the Convention. The Home Affairs Bureau was responsible for the promotion of public awareness of its provisions, and policies and practices were scrutinized by the Legislative Council. The Independent Police Complaints Council, the Office of the Ombudsman, NGOs and the media also played a monitoring role.

63. Ms. YAU (China) said that the officers assigned to the Complaints against Police Office were subject to a separate chain of command from the rest of the police force. All investigations were monitored and reviewed by the Independent Police Complaints Council, an independent civilian body whose 18 members were drawn from a cross-section of the community and included members of the Legislative Council and the Ombudsman or his representative. Its credibility and transparency had been enhanced over the years by opening up many of its meetings to the public, installing closed circuit television and audio equipment at the Complaints against Police Office to record interviews, making it a disciplinary offence to tip off officers who were the subject of a complaint, allowing the Council's members to interview witnesses, establishing a special panel to monitor serious complaints, appointing retired Council members and other community leaders as lay observers of the Complaints against Police Office's investigations, and publicizing the complaints system and the work of the Council.

64. The Complaints against Police Office had published formal performance pledges and was committed to handling complaints within prescribed time limits. Members of the Independent Council could observe investigations on a scheduled or surprise basis. If the Council was not satisfied with an investigation, it could ask for clarifications or order a new investigation. If the results were still unsatisfactory, the Council could refer the case to the Chief Executive of the Hong Kong SAR with recommendations for follow-up. To further enhance the status of the Independent Council, a bill to consolidate its position as a statutory body would be put forward during the next term of the Legislative Council. According to a comparative study conducted in 1996, Hong Kong's police complaints system was one of the most sophisticated in Asia.

65. The Convention and China's report to the Committee had been published in Chinese and English in both a conventional and a user-friendly format and distributed widely. She attributed the lack of complaints invoking the Crimes (Torture) Ordinance to the tendency of members of the public to report incidents without quoting a legal provision. In any case, no reported incident matched the definition of torture contained in the Ordinance.

66. With regard to the decision not to prosecute under the Crimes (Torture) Ordinance in the case involving four police officers in 1998, she stressed that the Government of the SAR did not condone or tolerate the use of excessive force by police officers, who were trained to treat all persons, including detainees and arrested persons, with humanity and respect. Officers who failed to comply with those requirements were subject to disciplinary action or criminal proceedings as appropriate. The four police officers in the 1998 case had been convicted of a criminal offence and sentenced to imprisonment. All of them had been dismissed from the police force.

67. Police officers received comprehensive training on the proper procedure for questioning suspects and taking statements. They were well aware that improperly obtained statements or evidence could be declared inadmissible in court. Police and other law enforcement officers were familiarized with the provisions of the Convention against Torture and the Crimes (Torture) Ordinance. They were warned that infringement of the legislation governing individuals' rights could constitute a criminal offence. Comprehensive guidance and procedures were contained in the Police Force Ordinance, the Police General Orders and the Headquarters Orders. The SAR authorities would certainly redouble their police training efforts where there was a demonstrable need for improvement and would keep abreast of developments in investigation methods and technology. However, they did not see a correlation between the existence of such facilities and the number of complaints concerning the alleged use of violence by the police.

68. Turning to Mr. Silva Henriques Gaspar's comments and questions on the admissibility of confession statements, she agreed that defendants frequently challenged in court the admissibility of statements made under caution on the grounds that they had been improperly obtained. However, no reliable statistical assessment could be made unless such incidents were reported to the authorities. Much effort had been devoted to encouraging people to come forward, but to date there was simply no evidence to indicate that a large number of cases went undetected or unreported.

69. The authorities treated with the utmost seriousness any indication that evidence had been fabricated or extracted by illegal means, particularly by forced confession. All such complaints against the police or other law enforcement agencies were investigated by the police, and the Secretary for Justice could decide on criminal and/or disciplinary action against the officer concerned.

70. Far-reaching measures had been introduced in recent years to address criticisms relating to the interviewing of suspects and vulnerable victims. In response to Ms. Gaer's question on the use of videotaping in the legal system, she was able to report that there was now at least one such system in each major police station. Videotaping was mandatory for all cases tried at and above the district court level. The legislation had also been changed to allow vulnerable victims, such as the under-aged and mentally handicapped, to give evidence in court through a TV-link system.

71. Mr. David WONG (China), responding to Mr. Mavrommatis' question on the availability of judicial review for non-Vietnamese refugees and migrants wishing to stay in Hong Kong, said that anyone who was the subject of a removal or deportation order had the legal right to appeal to the appropriate authorities. Since Hong Kong had adopted a common law legal system, judicial review was available to anyone who felt aggrieved at a decision taken by the authorities in any area of governmental administration, immigration being no exception.

72. Regarding possible discrimination between a child born in Hong Kong to a mother from the mainland and the child's siblings born on the mainland, the right of abode in Hong Kong was determined by the provisions of article 24 of the Basic Law, whose meaning and effect continued to be the subject of litigation in the SAR courts. Article 24 provided that a person's status

depended on a number of factors, including his or her place of birth and the status of the parents. Where they applied to the Immigration Ordinance, the provisions distinguished between individuals on the basis of objective and rational criteria.

73. Concerning Ms. Gaer's questions on the extent of sexual violence against women in Hong Kong's prisons and the protection they were accorded, he said that the Correctional Services Department referred all allegations of sexual violence in prisons to the police for investigation. The record showed no reported cases of sexual violence inflicted by staff on female or male inmates in the past 10 years. The Prisons Ordinance contained unambiguous provisions for protection of inmates against sexual violence: in mixed prisons, separate premises were used for men and women, no prison staff were allowed to enter accommodation occupied by a prisoner of the opposite sex unless accompanied by another officer of the same sex as the prisoner, no prisoner could be searched by an officer of the opposite sex, female prisoners must in all cases be attended to by female officers, and the keys of premises allocated to women must be under the control of female officers.

74. Inmates of either sex enjoyed unrestricted access to internal and external complaint channels, including the Complaints Investigation Unit of the Correctional Services Department, visiting justices of peace, the Ombudsman, the police, the Independent Commission against Corruption, the Chief Executive, and legislative counsellors.

75. Female inmates were entitled to regular interviews with prison welfare officers or aftercare officers of the same sex, and could ask to see medical officers or clinical psychologists in private. Workers from NGOs also conducted regular visits to female institutions. Moreover, female inmates could address sex-related complaints to specific female prison officers in order to avoid possible embarrassment. In the unlikely event of sexual violence, inmates were entitled to legal redress under the Criminal Procedures Ordinance and the Criminal and Law Enforcement Injuries Compensation Scheme, and through other instruments, as described in the report.

76. Mr. DEAN (China), responding to questions put by Ms. Gaer and Mr. Mavromattis, said that his Government was acutely aware of the need to combat domestic and sexual violence and trafficking in women. The legislation existed to deal with the perpetrators and help the victims, but the Government was taking steps to strengthen all such punitive, prophylactic and remedial measures.

77. The major laws protecting women against violence were contained in the Offences Against the Person Ordinance (Chapter 212), which dealt inter alia with homicide, assaults, forcible taking or detention of persons, and unlawful abortion, and the Crimes Ordinance (Chapter 200), which concerned sexual and related offences. The penalties applicable under the latter had recently been amended. In particular, the maximum prison term for incest committed with women between the ages of 13 and 16 had been raised from 7 to 20 years. In addition, the Legislative Council was currently considering amendments intended to provide law enforcement agencies with the power to take intimate and non-intimate samples for the purpose of prosecuting serious crimes, including sexual offences. In the same context, in 1995 the Criminal Procedures (Amendment) Ordinance and the Evidence (Amendment) Ordinance had been enacted in order to provide greater protection for vulnerable witnesses.

78. An issue of current concern was the proposed abolition of corroboration rules in sexual offence cases. As a general rule in Hong Kong, evidence given against a defendant did not require corroboration. A conviction could be obtained on the uncorroborated evidence of a single credible witness, provided that the judge or jury was satisfied beyond reasonable doubt of the defendant's guilt. Historically, the only exceptions had been evidence provided by accomplices, children and the complainant in a sexual offence. The first two of those exceptions having been abolished in 1994 and 1995 respectively, the Government now sought to abolish the corroboration rules relating to sexual offences, on the grounds that their inflexibility, complexity and tendency to create anomolies worked to the disadvantage of victims. Abolition of the corroboration rules for sexual offences would not leave defendants inadequately protected, since the general obligations of trial judges already ensured a fair trial for defendants. Accordingly, a bill amending the Evidence Ordinance (Chapter 8) so as to abolish the corroboration rules in sexual offence cases had been introduced in the Legislative Council in June 1999 and was currently being considered.

79. The total of reported sex crimes, had decreased from 2,386 in 1995 to 1,972 in 1999. The figures covered rape, indecent assault, unlawful sexual intercourse, keeping a vice establishment and procuring/abducting females. The delegation would provide the Committee with a statistical breakdown on request.

80. With regard to non-legislative measures in the area of sexual violence, police officers were encouraged to adopt a sensitive and sympathetic approach towards victims, and police procedural manuals required officers to safeguard victim's privacy and help reduce the trauma suffered. Immediate post-violence medical treatment and counselling were available for all victims. Female victims with gynaecological injuries were admitted in the first instance to the gynaecology ward. The attending gynaecologist was responsible for coordinating the victim's treatment with other carers such as clinical psychologists, psychiatrists and medical social workers. All staff working in accident and emergency departments were issued with guidelines on the management of victims of sexual assault. Hospital staff actively utilized all appropriate services to help rape victims.

81. With regard to domestic violence, he was again unable to provide detailed figures. However, the number of reports on spouse battering received in 1998 and 1999, had been 1,200 and 1,172 respectively. He would attempt to provide a statistical breakdown if the Committee so wished. In addition to the protection offered by the Crimes Ordinance and the Offences Against the Persons Ordinance, victims were also covered by the Domestic Violence Ordinance (Chapter 189), which empowered courts to grant injunctions, on application by a party to a marriage, to restrain the other party from molesting the applicant or to exclude the other party from a specified area, which could be the matrimonial home.

82. A variety of measures were in place to prevent domestic violence. They included local Family Activity and Resource Centres, which provided advice and developed mutual aid and social networking. They were supplemented by hotlines and inquiry services.

83. An interdisciplinary working group on battered spouses, comprising representatives from government departments, the Hospital Authority and NGOs, had also been formed. It had recently produced a set of multidisciplinary guidelines designed to streamline the procedures

used in handling battered spouse cases, and had set up a central information system that collected relevant statistics to facilitate service planning. It also conducted education activities to raise public awareness.

84. Police officers received special training in handling domestic violence cases. They worked in close liaison with the NGOs concerned with spouse battering; in the past two years, some 3,000 police officers had attended NGO seminars to learn more about handling domestic violence cases.

85. Regarding commercial sex workers and trafficking in women, prostitution was not an offence in Hong Kong. Rather, the law targeted those who organized and exploited prostitution. Under the Crimes Ordinance, trafficking in people, causing prostitution and exercising control over commercial sex workers were outlawed. Moreover, any person who unlawfully took an unmarried girl under the age of 16 out of the possession of her parent or guardian or abducted an unmarried girl under the age of 18 with the intention of forcing her to have unlawful sexual intercourse with a man or men was liable to a severe prison sentence. In order to combat the exploitation of women by organized crime elements, the Crimes Ordinance contained measures against "keeping a vice establishment". Needless to say, all legislation relating to violence against women applied equally to commercial sex workers and to women in general.

86. Ms. YAU (China), responding to a question put by Mr. Mavrommatis, said that within the scope of the Crimes (Torture) Ordinance, which gave effect to the Convention in Hong Kong's domestic law, the definition of "public official" was intended to be illustrative and not exhaustive. The list of officers provided in the Ordinance would not pre-empt the prosecution or conviction of other public officials. Although no judicial interpretation had been made concerning the scope of the term "public official", the courts would take account of the Convention in determining whether a person accused was a "public official" or a "person acting in an official capacity". Her delegation had obtained a copy of the Committee's decision relating to the interpretation of "public official" in the Mogadishu case, which would be taken back to Hong Kong for further study.

87. In answer to Ms. Gaer, who had asked whether persons in charge of care for the elderly were covered by the term "persons acting in an official capacity", all care facilities and nursing homes for the elderly were operated either by NGOs or by the private sector, under the supervision of the Director of Social Welfare, on the basis of a licensing system that met the requirements of the Residential Care Homes (Elderly Persons) Ordinance introduced in 1996. The licensing office was responsible for enforcing the legislation and for providing guidance and advice to all operators of residential care homes. In addition, the Code of Practice for Residential Care Homes (Elderly Persons) provided guidelines intended to ensure that staff worked to an acceptable standard.

88. In reply to another question raised by Ms. Gaer, section 3 (4) of the Crimes (Torture) Ordinance provided for the defence of lawful authority, justification or excuse, and was intended to give effect to the final sentence of article 1.1 of the Convention. It covered matters such as the reasonable use of force to restrain a violent prisoner; it was not intended, and would not be interpreted, as authorizing conduct intrinsically equivalent to torture. Again, there had been no judicial interpretation of the defence provision. However, the courts would certainly have regard

to the general thrust of the Convention if any such cases were raised in the future. The drafting of the Crimes (Torture) Ordinance conformed closely to the approach used in other common law jurisdictions such as the United Kingdom.

89. Mr. Stephen WONG (China) emphasized that Hong Kong's prosecuting authority deliberately avoided using the Crimes (Torture) Ordinance as a means of protecting police officers. His Government had issued a public document on prosecution policy under the Crimes (Torture) Ordinance. Members would agree that, as a matter of general principle, there should be no requirement for automatic prosecution once a suspected offence against an individual was established. As in other jurisdictions, the overriding factor that the prosecuting authority considered before laying any charges was sufficiency of evidence. The prosecution could not begin unless there was admissible, substantial and reliable evidence that a criminal offence recognized in law had been committed by an identifiable person. In the case of the four police officers mentioned in his opening statement and by Ms. Yau, the prosecution had concluded that there was no reasonable prospect of securing a conviction for an offence under section 3 of the Ordinance, having evaluated the evidence and circumstances of the case. However, in certain circumstances, if there was a choice between the theoretical possibility of convicting a police officer of a very serious charge and a much greater possibility of securing a conviction on a lesser charge, the latter option was chosen. Thus, although the four police officers had not been charged with the offence of torture, they had been prosecuted and imprisoned for the offence of assault occasioning actual bodily harm, and dismissed from the force.

90. The CHAIRMAN thanked the delegation for their detailed replies and asked the members of the Committee if they had any more comments or questions.

91. Ms. GAER said she had found the delegation's explanations regarding the interpretations received from the standing committee of the National People's Congress very interesting. She would like the SAR authorities to clarify the conditions under which it would seek an interpretation and the issues on which it would not seek an interpretation. She would also like the delegation to clarify what safeguards were in place in respect of refoulement in accordance with article 3 of the Convention.

The meeting rose at 6 p.m.